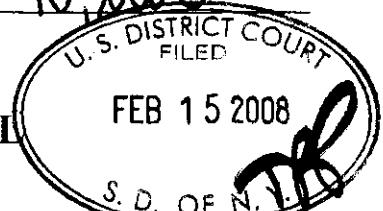


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKDocument # 173U.S.C.A. #

USA

-v-

Nelson RybarU.S.D.C. # 07cv-7141JUDGE: TPGDATE: Feb. 15, 2008

INDEX TO THE RECORD ON APPEAL

PREPARED BY (NAME): THOMAS R. PISARCZYKFIRM: U.S. DISTRICT COURT - SOUTHERN DISTRICT OF NEW YORKADDRESS: 500 PEARL STREET, ROOM 370
NEW YORK, NEW YORK 10007PHONE NO.: (212) 805 - 0636

DISTRICT COURT DOCKET ENTRIES -----

DOCUMENT DESCRIPTION

DOC.

CLERK'S CERTIFICATE

SEE ATTACHED LIST OF NUMBERED DOCUMENTS

** ONLY CIRCLED DOCUMENTS ARE INCLUDED **

→ ** ALL OTHERS MISSING AT THIS TIME ** ←

(X) Original Record

() Supplemental Record

The record in the above entitled case was indexed to the U.S.C.A.
for the Second Circuit on the 15th Day of February, 2008.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USA

-v-

Nelson Ayber

U.S.C.A. #

92-cr-0718-3

U.S.D.C. # 07-cr-7141

JUDGE: TPG

DATE: Feb. 15, 2008

Clerk's Certificate

I, J. Michael McMahon, Clerk of the Court of the United States District Court for the Southern District of New York, do hereby certify that the certified copy of the docket entries and the original filed papers numbered 1 Through 172, inclusive, constitutes the Original record on appeal in the above entitled proceedings except for the following missing documents:

Date Filed

Document Description

BALANCE OF FILE MISSING AT THIS TIME

In Testimony Whereof, I have caused the seal of said Court to be hereunto affixed, at the City of New York, this 15th Day of February In this year of our Lord, Two Thousand and Eight, and the Independence of the United States this 232nd year.

J. Michael McMahon, Clerk

By _____

Deputy Clerk

APPEAL, PRIOR

U.S. District Court
United States District Court for the Southern District of New York (Foley Square)
CRIMINAL DOCKET FOR CASE #: 1:92-cr-00718-TPG-3
Internal Use Only

Case title: USA v. Martinez
 Related Case: 1:07-cv-07141-KMW
 Magistrate judge case number: 1:92-mj-01601

Date Filed: 08/27/1992
 Date Terminated: 10/20/1995

Date Filed	#	Docket Text
08/07/1992	1	COMPLAINT as to Alejandro Martinez, Jose De Jesus Zapata-Herrera, Nelson Aybar, Johnny Aybar, Michael R. Williams, Felix Hernandez, Jose LNU, Margarita LNU, Fernando LNU, Francisco Bolivar, Miguel Gonzalez Alejandro Martinez (1) count(s) cmp, Jose De Jesus Zapata-Herrera (2) count(s) cmp, Nelson Aybar (3) count(s) cmp, Johnny Aybar (4) count(s) cmp, Michael R. Williams (5) count(s) cmp, Felix Hernandez (6) count(s) cmp, Jose LNU (7) count(s) cmp, Margarita LNU (8) count(s) cmp, Fernando LNU (9) count(s) cmp, Francisco Bolivar (10) count(s) cmp, Miguel Gonzalez (11) count(s) cmp (signed by Magistrate Judge Nina Gershon Chief) [1:92-m-1601] (hs) (Entered: 08/25/1992)
08/07/1992	4	Arrest WARRANT issued as to Nelson Aybar (Nina Gershon, Chief Mag. Judge) [1:92-m-1601] (hs) (Entered: 08/25/1992)
08/07/1992	8	Arrest WARRANT issued as to Jose LNU (Nina Gershon, Chief Mag. Judge) [1:92-m-1601] (hs) (Entered: 08/25/1992)
08/14/1992		ARREST of Nelson Aybar [1:92-m-1601] (hs) (Entered: 08/26/1992)
08/14/1992	15	Arrest WARRANT Returned Executed as to Nelson Aybar on 8/14/92 [1:92-m-1601] (hs) (Entered: 08/26/1992)
08/14/1992	16	NOTICE of Appearance for Nelson Aybar by Attorney Orlando Velez [1:92-m-1601] (hs) (Entered: 08/26/1992)
08/14/1992		First Appearance as to Nelson Aybar held Preliminary Examination set for 10:30 8/28/92 for Nelson Aybar ; deft. pres. w/atty, Orlando Velez, Ret., deft. detained pending detention hrg. on 8/18/92 at 10:00am (Kathleen A. Roberts, Mag. Judge) [1:92-m-1601] (hs) (Entered: 08/26/1992)
08/18/1992	17	NOTICE of Appearance for Nelson Aybar by Attorney Gregory Cooper [1:92-m-1601] (hs) (Entered: 08/26/1992)
08/18/1992		Detention hearing as to Nelson Aybar held deft. pres. w/atty, Gregory Cooper, Ret., detention hrg. adj. to 8/21/92 at 10:30 am (James C. Francis, IV Mag. Judge) [1:92-m-1601] (hs) (Entered: 08/26/1992)
08/21/1992		Detention hearing as to Nelson Aybar held deft. pres. w/atty, Gregory Cooper, Ret., bail set in the amount of \$250,000 PRB cosigned by 5 FRP's and sec. by \$5,000, strict PSA sup., inc. elect. monitoring, surr. of passport. (James C. Francis, IV Mag. Judge) [1:92-m-1601] (hs) (Entered: 08/26/1992)
08/24/1992	18	PRB BOND filed by Nelson Aybar in Amount \$ 250,000 bond cosigned by Eva Aybar, address: 623 W. 170th Street, apt. 3b, New York, N.Y. 10032 and by Ricardo Toribio, address: 329 55th Street., BKlyn, NY 11220 and by Rosina Pichardo, address: 2720 Grand Concourse apt. 42C Bronx, NY 10458 and by Hector B. Abreu, address: 101-12 46 Ave. apt. 3G, Corona, NY 11368 and by Ruben Abreu, address: 1213 Ogden Ave., Bronx, NY 10456 [1:92-m-1601] (hs) (Entered: 08/26/1992)
08/25/1992	18	by Nelson Aybar as to Nelson Aybar deft. signed bond., \$5,000 posted by Eva Aybar, (deft's wife) Rec.# m19-1-8726//175715 [1:92-m-1601] (hs) (Entered: 08/26/1992)
08/25/1992	19	Order of advice of penalties and sanctions as to Nelson Aybar (signed by Magistrate Judge James C. Francis IV) [1:92-m-1601] (hs) (Entered: 08/26/1992)
08/27/1992	37	INDICTMENT as to Alejandro Martinez (1) count(s) 1, Jose De Jesus Zapata-Herrera (2) count(s) 1, Nelson Aybar (3) count(s) 1, Johnny Aybar (4) count(s) 1, Felix Hernandez (5) count(s) 1, Jose Miguel Rodriguez (6) count(s) 1, Michael R. Williams (7) count(s) 1, Margarita Hernandez (8) count(s) 1, Francisco Bolivar (9) count(s) 1, Holguer Miguel Garay (10) count(s) 1 (Preliminary Examination cancelled.) (If) (Entered: 08/28/1992)
09/03/1992		Arraignment as to Nelson Aybar held Nelson Aybar (3) count(s) 1 deft. pres w/atty Harvey Fishien for gregory. Cooper. plead not guilty. Bail cont'd at \$250,000.00 PRB_ \$5,000.00/c-5FRP Strict psa w/Electronic Monitoring and sur p/p. before Magistrate Judge Barbara A. Lee (gb) (Entered: 09/16/1992)
09/03/1992		PLEA entered by Nelson Aybar . Court accepts plea. Not Guilty: Nelson Aybar (3) count(s) 1 (gb) (Entered: 09/16/1992)
09/03/1992		CASE assigned to Judge Thomas P. Griesa (gb) (Entered: 09/16/1992)
09/15/1992		Pre-trial conference as to Nelson Aybar held deft. pres w/atty Lloyd Epstein, deft Jose Rodriguez pres w/atty Sol Kaplan, deft M. Williams not pres atty Steven Frankel pres, deft F. bolivar pres w/atty Calvin Garber, Deft H. Garay pres w/atty Carlos Olivo. Gov't by Sharon Davies and Michael Rogoff AUSA. Pre-trial conf held., Next Trial scheduled for 10-22-92 at 4:30 p.m. time is excluded from speedy trial calculations from todays date till 10-22-92 in the interest of justice defts N. Aybar, F. Hernandez and A. Martinez cont'd released. Defts J. Rodriguez, F. Bolivar and H. Garay cont'd remanded... (gb) (Entered: 09/16/1992)
09/15/1992		Jury trial as to Alejandro Martinez, Nelson Aybar, Felix Hernandez, Jose Miguel Rodriguez, Francisco Bolivar, Holguer Miguel Garay set at 4:30 10/22/92 for Alejandro Martinez, for Nelson Aybar, for Felix Hernandez, for Jose Miguel Rodriguez, for Francisco Bolivar, for Holguer Miguel Garay (gb) (Entered: 09/16/1992)
10/28/1992		Pre-trial conference as to Nelson Aybar, Felix Hernandez, Jose Miguel Rodriguez held deft N. Aybar pres w/atty Gregory Cooper, deft F. Hernandez pres w/atty Trevor Ried, deft J. Rodriguez pres w/atty Hal Koplan, Gov't by Sharon Davies, AUSA. Pre-trial conf held. Next conf sch'd for 1.7.93 at 9:45 a.m. Deft cont'd released.. (gb) (Entered: 10/28/1992)
01/06/1993	52	TRANSCRIPT of record of proceedings as to Alejandro Martinez, Jose De Jesus Zapata-Herrera, Nelson Aybar, Johnny Aybar, Felix Hernandez, Jose Miguel Rodriguez, Michael R. Williams, Margarita Hernandez, Francisco Bolivar, Holguer Miguel Garay . (gb) (Entered: 01/06/1993)
01/06/1993	54	TRANSCRIPT of record of proceedings for dates of k. (rag) (Entered: 01/06/1993)

01/07/1993		Pre-trial conference as to Nelson Aybar, Jose Miguel Rodriguez, Michael R. Williams held deft. Nelson Aybar pres w/atty Gregory Cooper, deft Felix Hernandez pres w/atty Sol Kaplan for Trevor Reid, deft Jose Rodriguez pres w/atty Sol Kaplan, gov't by Sharon Davies and Michael Rogoff AUSA. Pretrial conf held., Next coauf sh'd for 2.9.92 at 4:30 p.m. Time exc. from speedy trial calculations from todays date til 2.9.92 in the interest of justice..deft N. Aybar, F. Hernandez and J. Rodriguez cont'd released.. (gb) (Entered: 01/08/1993)
01/20/1993	55	by Alejandro Martinez, Jose De Jesus Zapata-Herrera, Nelson Aybar, Johnny Aybar, Felix Hernandez, Jose Miguel Rodriguez, Michael R. Williams, Margarita Hernandez, Francisco Bolivar, Holguer Miguel Garay, USA Subpoena in a criminal case..to Commissioner N.Y.C. Parking Violations on 1.7.93. (gb) (Entered: 01/20/1993)
01/20/1993	56	by Alejandro Martinez, Jose De Jesus Zapata-Herrera, Nelson Aybar, Johnny Aybar, Felix Hernandez, Jose Miguel Rodriguez, Michael R. Williams, Margarita Hernandez, Francisco Bolivar, Holguer Miguel Garay, USA Filed Subpoena in a criminal case..to Commissioner N.Y.C. Parking Violations Bureau of 1.7.93., (gb) (Entered: 01/20/1993)
03/08/1993		Notice of appeal and certified copy of docket to USCA: [60-1] appeal by Holguer Miguel Garay ; Copy of notice of appeal sent to District Judge. (jf) (Entered: 03/08/1993)
03/18/1993	62	SUPERSEDING INDICTMENT as to Jose De Jesus Zapata-Herrera (2) count(s) 1s, Nelson Aybar (3) count(s) 1s, Johnny Aybar (4) count(s) 1s, Felix Hernandez (5) count(s) 1s, Jose Miguel Rodriguez (6) count(s) 1s, 2s, 3s, Margarita Hernandez (8) count(s) 1s (gb) (Entered: 03/22/1993)
03/30/1993	64	Filed Memo-Endorsement on letter dtd. 3.29.93 as to Nelson Aybar, reset motion filing deadline for 4/19/93 for Nelson Aybar , to Continue in Interests of Justice (Signed by Chief Judge Thomas P. Griesa); Copies mailed. (gb) (Entered: 03/31/1993)
05/17/1993	71	SCHEDULING ORDER as to Alejandro Martinez, Jose De Jesus Zapata-Herrera, Nelson Aybar, Johnny Aybar, Felix Hernandez, Jose Miguel Rodriguez, Michael R. Williams, Margarita Hernandez, Francisco Bolivar, Holguer Miguel Garay setting Motion Filing deadline on 5/31/93 for Alejandro Martinez, for Jose De Jesus Zapata-Herrera, for Nelson Aybar, for Johnny Aybar, for Felix Hernandez, for Jose Miguel Rodriguez, for Michael R. Williams, for Margarita Hernandez, for Francisco Bolivar, for Holguer Miguel Garay ; Reply to response to motion deadline 7/12/93 for Alejandro Martinez, for Jose De Jesus Zapata-Herrera, for Nelson Aybar, for Johnny Aybar, for Felix Hernandez, for Jose Miguel Rodriguez, for Michael R. Williams, for Margarita Hernandez, for Francisco Bolivar, for Holguer Miguel Garay ; Response to motion deadline 7/28/93 for Alejandro Martinez, for Jose De Jesus Zapata-Herrera, for Nelson Aybar, for Johnny Aybar, for Felix Hernandez, for Jose Miguel Rodriguez, for Michael R. Williams, for Margarita Hernandez, for Francisco Bolivar, for Holguer Miguel Garay ; (Signed by Chief Judge Thomas P. Griesa) (gb) (Entered: 05/18/1993)
05/21/1993	74	TRANSCRIPT of record of proceedings as to Nelson Aybar, Jose Miguel Rodriguez for dates of 1/7/93. (kg) (Entered: 05/24/1993)
08/10/1993		Pre-trial conference as to Nelson Aybar, Francisco Bolivar held deft. N. Aybar pres w/atty Gregory Cooper, Deft F. Hernandez pres w/atty Trevor Reid, gov't by Micahle Rogoff, AUSA. Pre-trial conf held. Tiral date set for 11.1.93 at 10:00 a.m. Deft. cont'd releaed. (gb) (Entered: 08/18/1993)
11/01/1993	80	Filed Government's proposed examination of prospective jurors. (gb) (Entered: 11/01/1993)
11/01/1993	81	Request to Charge by USA (gb) (Entered: 11/01/1993)
11/01/1993	82	Filed affirmation for writ fo habes corpus...Marino Rodriguez be produced. (gb) (Entered: 11/02/1993)
11/02/1993		Voir dire begun as to Nelson Aybar (3) count(s) 1s Terminiated motions: (gb) (Entered: 11/05/1993)
11/02/1993		Voir dire begun as to Nelson Aybar (3) count(s) 1, Felix Hernandez (5) count(s) 1s, 1 Terminated motions: (gb) (Entered: 11/05/1993)
11/02/1993		Jury impaneled as to Nelson Aybar, Felix Hernandez (gb) (Entered: 11/05/1993)
11/02/1993		Jury trial as to Nelson Aybar, Felix Hernandez held deft. pres w Gregory Cooper., Deft Felix Hernandez pres /watty Trevor Reid. Gov't by Michael Rogoff and Celeste Koeleveld. Voir dire begins., Jury sworn and empanelled. Trial adj. to 11.3.93 (gb) (Entered: 11/05/1993)
11/03/1993		Jury trial as to Nelson Aybar, Felix Hernandez held (gb) (Entered: 11/05/1993)
11/04/1993		Jury trial as to Nelson Aybar, Felix Hernandez held (gb) (Entered: 11/05/1993)
11/05/1993		Jury trial as to Nelson Aybar, Felix Hernandez held (gb) (Entered: 11/05/1993)
11/06/1993		Jury trial as to Nelson Aybar, Felix Hernandez held (gb) (Entered: 11/16/1993)
11/08/1993		Jury trial as to Nelson Aybar, Felix Hernandez held (gb) (Entered: 11/16/1993)
11/09/1993		Jury trial as to Nelson Aybar, Felix Hernandez held (gb) (Entered: 11/16/1993)
11/09/1993		Jury trial as to Nelson Aybar, Felix Hernandez held (gb) (Entered: 11/16/1993)
11/10/1993		Jury trial as to Nelson Aybar, Felix Hernandez held (gb) (Entered: 11/16/1993)
11/11/1993		Jury trial as to Nelson Aybar, Felix Hernandez held (gb) (Entered: 11/16/1993)
11/12/1993		Jury trial as to Nelson Aybar, Felix Hernandez held jury reaches a verdict., trial cont'd and ends., N. Aybar: guilty as charged., F. Hernandez: guilty as charged., Pre-sentence report ordered., Sentence date set for 1.21.94 at 10:00 a.m., Gov't oral application for revocations of bail for Aybar and Hernandez is granted in open court., Deft. remanded.. (gb) (Entered: 11/16/1993)
11/12/1993		JURY VERDICT as to Nelson Aybar Guilty: Nelson Aybar (3) count(s) 1s (gb) (Entered: 11/16/1993)
11/12/1993		Sentencing set for 10:00 1/21/94 for Nelson Aybar, for Felix Hernandez , Nelson Aybar (3) count(s) 1s, Felix Hernandez (5) count(s) 1s (gb) (Entered: 11/16/1993)
11/12/1993		Court Orders pre-sentence investigation as to Nelson Aybar, Felix Hernandez (gb) (Entered: 11/16/1993)
11/15/1993	85	TRANSCRIPT of record of proceedings as to Nelson Aybar, Felix Hernandez for dates of 8/10/93 at 5:25pm. (kg) (Entered: 11/15/1993)
02/22/1994	90	TRANSCRIPT of record of proceedings as to Nelson Aybar, Felix Hernandez for dates of 11.1.93. (gb) (Entered: 02/22/1994)
03/18/1994	92	TRANSCRIPT of record of proceedings as to Nelson Aybar, Felix Hernandez for dates of 11/3-5,8-12/93.. (kg) (Entered: 03/18/1994)
06/02/1994	98	CJA 23 Financial Affidavit as to Nelson Aybar : SPANISH FORM.. (Signed by Magistrate Judge Ronald L. Ellis) (gb) (Entered: 08/12/1994)

06/09/1994	95	MOTION by Nelson Aybar requesting the court assign new counsel.. (gb) (Entered: 06/09/1994)
06/23/1994		ORDER as to Nelson Aybar granting [95-1] motion requesting the court assign new counsel.. as to Nelson Aybar (3) (follows oral order , entered 8/27/92) (Signed by Chief Judge Thomas P. Griesa); Copies mailed. (gb) (Entered: 06/24/1994)
06/27/1994	96	Filed Memo-Endorsement on letter to Judge Griesa from Gregory Cooper as to Nelson Aybar, ..in re: I have rec'd a copy of Mr. Aybar's letter to Your honor requesting assignment by the Court of new counsel., sentence be postponed and a conference held to resolve Mr. Aybar's request..approved.. (Signed by Chief Judge Thomas P. Griesa); Copies mailed. (gb) (Entered: 06/28/1994)
07/11/1994	107	CJA 20 as to Nelson Aybar : Appointment of Attorney Joel M. Stein (Signed by Magistrate Judge Ronald L. Ellis) (mk) (Entered: 04/05/1995)
08/09/1994		Pre-trial conference as to Nelson Aybar held..deft N. Aybar pres w/atty Stein, gov't by Celeste Koelveld, AUSA . Deft's application to be relieved of counsel is granted in open court. Deft referred to Mag. court for the appointment of new counsel. Sentence adj. to 8.18.94 to 9.19.94 at 9:30 a.m. Deft. cont'd remanded... (gb) (Entered: 08/12/1994)
08/09/1994		Sentencing set for 9:30 9/19/94 for Nelson Aybar Nelson Aybar (3) count(s) 1s (gb) (Entered: 08/12/1994)
08/09/1994		ORAL ORDER as to Nelson Aybar , for Stein to withdraw as attorney (Terminated attorney Orlando Velez for Nelson Aybar (Entered by Chief Judge Thomas P. Griesa) (gb) (Entered: 08/12/1994)
08/11/1994	97	Filed letter by Nelson Aybar to Mr. Stein dtd. 7.13.94.. (gb) (Entered: 08/11/1994)
08/29/1994	102	Filed letter by Nelson Aybar to Judge Griesa dtd. 8.12.94..in re: a copy of grand jury transcripts.. (gb) (Entered: 08/29/1994)
08/29/1994	103	CJA 20 as to Nelson Aybar : Appointment of Attorney Gary S. Villanueva (Signed by Chief Judge Thomas P. Griesa) (gb) (Entered: 08/30/1994)
08/29/1994	104	ORDER as to Nelson Aybar, appointing Gary Villanueva to assume representation of deft.. (Signed by Chief Judge Thomas P. Griesa); Copies mailed. (gb) (Entered: 08/30/1994)
12/06/1994		Docketed as a Judgment #94,2370 on 12/6/94 (mk) (Entered: 01/05/1995)
10/12/1995	111	Filed Brief by Nelson Aybar re: requesting an Order to Mr. Gary S. Villanueva, Esq., summitt to the Court a Rule (33) purs. to Federal Rules of Criminal Procedure...based on the fact statute of limitation is over on or about Nov. 12, 1995. (ys) (Entered: 10/18/1995)
10/20/1995		Sentencing held Nelson Aybar (3) count(s) 1s (gb) (Entered: 10/27/1995)
10/20/1995		DISMISSAL of Count(s) on Government Motion as to Nelson Aybar Terminated motions: Counts Dismissed: Nelson Aybar (3) count(s) 1 (gb) (Entered: 10/27/1995)
10/20/1995	113	JUDGMENT Nelson Aybar (3) count(s) 1s. COUNTS 1S, 235 MOS IMPR W/SUPER REL 5 YRS..judgment in a criminal case...for offenses committed on or after 11.1.87..deft and attorney Gary Villanueva present..deft is hereby committed to the custody of the U.S. Bureau of prisons to be imprisoned for a term of two hundred and thirty-five mos.(235) ..deft is remanded..upon release from imprisonment deft shall be on supervised release for a term of five years..deft shall report in person to the probation office in the district to which the deft is released within 72 hours of release from the custody of the Bureau of prisons..deft shall not possess a firearm or destructive device..statement of reasons attached... ; Judgment and Commitment issued to U.S. Marshal (Signed by Chief Judge Thomas P. Griesa) (gb) (Entered: 10/27/1995)
10/23/1995	114	NOTICE OF APPEAL by Nelson Aybar from judgment entered 10/19/95. Copies sent to US Atty., courtreporters, judge, USCA. (as) (Entered: 10/27/1995)
10/27/1995		Notice of appeal and certified copy of docket to USCA: [114-1] appeal by Nelson Aybar ; Copy of notice of appeal sent to District Judge. (as) (Entered: 10/27/1995)
10/30/1995		Docketed as a Judgment #95,2108 on 10/30/95. (rag) (Entered: 10/30/1995)
10/31/1995		Notice of appeal and certified copy of docket to USCA: [115-1] appeal by Felix Hernandez ; Copy of notice of appeal sent to District Judge. (em) (Entered: 10/31/1995)
11/01/1995		Filed Memo-Endorsement on Motion doc# 111... as to Nelson Aybar,... Rule (33) pursuant to FRCP....application denied. So Ordered: (Signed by Chief Judge Thomas P. Griesa); Copies mailed. (ys) (Entered: 11/16/1995)
11/21/1995	116	File notice that the record on appeal as to Nelson Aybar has been certified and transmitted to USCA on 11/21/95 [114-1] appeal (rag) (Entered: 11/24/1995)
12/11/1995	119	Judgment Returned Executed as to Nelson Aybar. Defendant delivered on 12/4/95 to FCI Schuyl at Minersville, PA, with a certified copy of this judgment. (ys) (Entered: 12/26/1995)
12/19/1995	117	TRANSCRIPT of record of proceedings as to Nelson Aybar, Felix Hernandez for dates of 10/19/95. (rag) (Entered: 12/19/1995)
05/31/1996		Payment of Fine in the amount of \$100.00 by USA . Date received: 5/31/96 (rag) (Entered: 06/05/1996)
06/20/1996	124	MANDATE OF USCA (certified copy) as to Nelson Aybar, Felix Hernandez Re: [115-1] appeal, [114-1] appeal affirming judgment/order Felix Hernandez (5) count(s) 1s, 1 (kk) (Entered: 06/24/1996)
09/10/1998		MOTION by Nelson Aybar to vacate under 28 U.S.C. 2255. Refer to 98cv6394. (mr) (Entered: 09/25/1998)
11/25/1998	136	ORDER as to Nelson Aybar, that the United States Attorney for this Southern District of New York file an answer or other pleading to the petition, along with the record on appeal, appellate briefs, and relevant trial and post-conviction records and transcript, no later than 1/1/99, and petitioner may file any reply papers no later than 2/1/99, , and that the Clerk of the Court serve copies of this order and the petition by certified mail upon the petitioner and the United States Attorney for the Southern District of New York. (Signed by Chief Judge Thomas P. Griesa); Copies mailed to petitioner by certified mail #P220747617 and to The U.S. Attorney's Office by certified mail #P220747616 on 12/1/98. (mr) Modified on 12/01/1998 (Entered: 12/01/1998)
01/08/1999	138	Filed Memo-Endorsement on letter addressed to Judge Griesa from Celeste L. Koeleveld, AUSA, dated 12/30/98 (Re: Nelson Aybar). Granting Government's request for an add'l 30 days, until 2/2/99, to respond to the petition of deft, Nelson Aybar, made purs. to 28 U.S.C. 2255. (Signed by Chief Judge Thomas P. Griesa); Copies mailed. (emil) (Entered: 01/15/1999)
02/04/1999	140	Filed Memo-Endorsement on letter dated 1/30/99 to Judge Griesa signed by AUSA Celeste L. Koeleveld as to Nelson Aybar, Felix Hernandez, requesting an extension of time, until 3/1/99, to respond to the defendant's 2255 petitions....Approved. (Signed by Chief Judge Thomas P. Griesa); Copies mailed. (mr) (Entered: 02/08/1999)

02/17/1999	141	MEMORANDUM by U.S.A. as to Nelson Aybar, Felex Hernandez in opposition to defendant's petitions, pursuant to 28 USC 2255, to vacate, set aside, or correct their sentence. (pr) (Entered: 04/08/2003)
03/01/1999	143	Filed Memo-Endorsement on letter dated 2/23/99 to Judge Griesa signed by Nelson Aybar, requesting an extension of time, until 3/22/99, to file a reply to the government's response....Approved. (Signed by Chief Judge Thomas P. Griesa); Copies mailed. (mr) (Entered: 03/05/1999)
03/23/1999	144	REPLY by Nelson Aybar to Government's response to 2255 petition. (mr) (Entered: 04/15/1999)
04/07/2002	161	File notice that the record on appeal as to Nelson Aybar has been certified and transmitted to USCA on 4/8/03 [159-1] appeal (pr) (Entered: 04/08/2003)
04/15/2002	160	MOTION by Nelson Aybar for leave to file a third supplemental motion to vacate, set aside or correct a sentence pursuant to 28 U.S.C. section 2255. (Refer to 98-CV-6394 (TPG)). (ph) Modified on 04/08/2003 (Entered: 05/08/2002)
05/29/2002	148	MOTION by Nelson Aybar for leave to file A Second Supplemental Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 18 U.S.C. section 2255. (Refer to 98-cv-6394). (ph) Modified on 06/06/2002 (Entered: 06/06/2002)
05/29/2002	149	MOTION by Nelson Aybar for an Order to compel the Respondent, Bobby P. Shearin, Warden, F.C.I. Loretto, to return all legal materials to petitioner confiscated by Federal Agents under respondent supervision. (Refer to 98-cv-6394). (ph) Modified on 06/06/2002 (Entered: 06/06/2002)
05/30/2002	147	MEMORANDUM OPINION # 87002 as to Nelson Aybar dismissing [o-1] motion for leave to file a third supplemental motion to vacate, set aside or correct a sentence pursuant to 28 U.S.C. section 2255. as to Nelson Aybar (3), dismissing [o-1] motion to vacate under 28 U.S.C. 2255. Refer to 98cv6394, as to Nelson Aybar (3)...The cases decided since Apprendi have held that the sentencing judge can make findings regarding drug quantity for the purposes of determining how the Sentencing Guidelines are to apply, and that this procedure does not create a problem under Apprendi so long as the statutory maximum is not exceeded. United States v. Thomas, 274 F.3d 655, 663-4 (2d Cir. 2001). In the present case the 235-month sentence does not exceed the 20-year maximum in 841(b)(1)(C). Therefore, there is no violation of the stricture announced in Apprendi. For the above reasons the court finds that Aybar's petition, including all its supplements, present no valid claim. The petition is DISMISSED. (Signed by Judge Thomas P. Griesa); Copies mailed. (jb) (Entered: 05/31/2002)
05/30/2002	150	MOTION by Nelson Aybar for leave to file supplemental motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C., Section 2255. Return Date not specified. (ja) (Entered: 06/11/2002)
06/13/2002	151	NOTICE OF MOTION by Nelson Aybar for reconsideration of the dismissal of Petitioner's Section 2255 motion. Return Date not specified. (ja) (Entered: 06/19/2002)
06/20/2002	152	MOTION by Nelson Aybar for reconsideration of District Court's Order denying Petitioner's Motion under 28 U.S.C. section 2255. This motion is requested pursuant to both Federal Rules of Civil Procedure, Rule 59(e) and U.S. Dist. Ct. Rules SDNY, Civil Rule 6.3. Return Date not specified. (ph) (Entered: 08/22/2002)
11/21/2002		Filed Memo-Endorsement on as to Nelson Aybar denying [152-1] motion for reconsideration of District Court's Order denying Petitioner's Motion under 28 U.S.C. section 2255. This motion is requested pursuant to both Federal Rules of Civil Procedure, Rule 59(e) and U.S. Dist. Ct. Rules SDNY, Civil Rule 6.3. as to Nelson Aybar (3), denying [151-1] motion for reconsideration of the dismissal of Petitioner's Section 2255 motion. as to Nelson Aybar (3). (Signed by Judge Thomas P. Griesa); (ph) (Entered: 11/26/2002)
12/09/2002	154	MOTION by Nelson Aybar pursuant to Rule 60(b) of the Fed. Rules of Civil Proc. for the Court to vacate and relieve defendant of its May 28, 2002 final order denying the defendant's Sec. 2255 motion based upon newly discovered evidence. (ja) (Entered: 12/16/2002)
01/17/2003		Filed Memo-Endorsement on as to Nelson Aybar denying [154-1] motion pursuant to Rule 60(b) of the Fed. Rules of Civil Proc. for the Court to vacate and relieve defendant of its May 28, 2002 final order denying the defendant's Sec. 2255 motion based upon newly discovered evidence. as to Nelson Aybar (3) (Signed by Judge Thomas P. Griesa); (jw) (Entered: 01/17/2003)
01/17/2003	155	APPLICATION by Nelson Aybar to proceed in forma pauperis Return Date not indicated. Refer to 98-cv-6394. (ph) Modified on 02/25/2003 (Entered: 02/25/2003)
01/17/2003	156	REQUEST FOR CERTIFICATE OF APPEALABILITY by Nelson Aybar. (ph) Modified on 02/25/2003 (Entered: 02/25/2003)
01/17/2003	159	NOTICE OF APPEAL by Nelson Aybar. [o-o] order . Copies of notice of appeal mailed to Attorney(s) of Record: US ATTORNEY, SDNY. I.F.P. DENIED 3/27/03, \$105.00 APPEAL FILING FEE DUE.. (pr) (Entered: 04/07/2003)
01/29/2003	157	MEMORANDUM/BRIEF by Nelson Aybar in support of [156-1] remark - REQUEST FOR CERTIFICATE OF APPEALABILITY. (ph) (Entered: 02/25/2003)
03/27/2003	158	ORDER as to Nelson Aybar, on May 28,2002 the court denied the motion made by Aybar under 28 U.S.C. section 2255. On November 20,2002 the court denied a motion for reconsideration. Petitioner has now filed a notice of appeal. Petitioner has not made a substancial showing of the denial of a constitutional right. Therefore a certificate of appealability will not issue. (Signed by Judge Thomas P. Griesa on 3/21/03); Microfilmed on 3/28/03 at 9:00 a.m. (ph) (Entered: 03/28/2003)
04/07/2003		Notice of Appeal with copy of order/judgment and two copies of docket entries as to Nelson Aybar transmitted to USCA re: [159-1] appeal on 4/7/03 (pr) (Entered: 04/07/2003)
04/08/2003	161	Indexed record on appeal files sent to the USCA, Appeal by Nelson Aybar (pr) (Entered: 04/08/2003)
04/28/2003		USCA Case Number as to Nelson Aybar Re: [159-1] appeal USCA NUMBER: 03-2219 (pr) (Entered: 04/28/2003)
07/14/2003	162	True Copy of Order from USCA as to Nelson Aybar Re: [159-1] appeal USCA: 03-2219. Appellant, pro se moves for in forma pauperis status and a certificate of appealability. Upon due consideration, it is ORDERED that the motions are DENIED and the appeal is DISMISSED. The appellant has not made a substancial showing of the denial of a constitutional right. 28 U.S.C. section 2253(c). Certified: 6/30/03. (ph) (Entered: 07/15/2003)
12/09/2003	163	MANDATE of USCA (certified copy) as to Nelson Aybar re: 159 Notice of Appeal - Final Judgment, 114 Notice of Appeal - Final Judgment USCA Case Number 03-2219. Appellant, pro se, moves for in forma pauperis status and a certificate of appealability. Upon due consideration, it is Ordered that the motions are DENIED and the appeal is DISMISSED. The appellant has not made a "substantial showing of the denial of a constitutional right." 28 U.S.C. section 2253(c). Issued As Mandate: 11/21/03. (ph,) (Entered: 01/07/2004)
12/09/2003		Transmission of USCA Mandate/Order to the District Judge re: 163 USCA Mandate - Final Judgment Appeal,, (pr,) (Entered: 01/08/2004)

02/20/2004		Appeal Record Returned. Indexed record on Appeal Files as to Nelson Aybar re: <u>159</u> Notice of Appeal - Final Judgment USCA Case Number 03-2219, returned from the U.S. Court of Appeals. (pr,) (Entered: 02/20/2004)
04/11/2005	164	MOTION filed by Nelson Aybar to reverse the conviction and sentence pursuant to Fed. Rules Crim. Proc. 12(b)(3)(B) due to the fact this court lack of subject-matter-jurisdiction because the respondent failure to charge an offense in violation of the Indictment Clause of the 5th Amendment of the U.S. Constitution. (bw,) (Entered: 04/18/2005)
11/10/2005	165	MOTION to supplement a pending petition filed with this Court pursuant to Fed. Rules Crim. Proc., Rule 12(b)(3)(B). Document filed by Nelson Aybar. (ja,) (Entered: 11/10/2005)
12/15/2006	166	ORDER - the Court denied dft's motion under 28 USC Sec 2255 on 5/30/02, and denied his motion for reconsideration on 11/21/02. Both the Court and the Second Circuit denied dft's request for a certificate of appealability because he failed to make a substantial showing of the denial of a constitutional right. Subsequently, dft has made a number of motions in this Court. ALL PENDING MOTIONS ARE HEREBY DENIED: denying <u>148</u> Motion for Leave to File as to Nelson Aybar (3); denying <u>149</u> Motion to Compel as to Nelson Aybar (3); denying <u>150</u> Motion for Leave to File as to Nelson Aybar (3); denying <u>155</u> Motion for Leave to Appeal In Forma Pauperis as to Nelson Aybar (3); denying <u>164</u> Motion as to Nelson Aybar (3); denying <u>165</u> Motion as to Nelson Aybar (3). SO ORDERED. (Signed by Judge Thomas P. Griesa on 12/15/06) (ja,) (Entered: 12/18/2006)
08/21/2007	- 1	MOTION to Vacate under 28 U.S.C. 2255 Document filed by Nelson Aybar. (jeh) Civil case 1:07-cv-7141 opened. (Entered: 08/21/2007)
08/28/2007	167	MOTION for Reconsideration pursuant to FRCP 59(e) of a Transfer Order issued on 8/10/2007, transfering a Fed. Rules of Criminal Proc. 48(b)(3) Motion to the Second Circuit as a Second or Successive 2255 Petition. Document filed by Nelson Aybar. (jar) (Entered: 08/31/2007)
09/25/2007		ORDER as to Nelson Aybar : the motion for reconsideration is denied. The Clerk of the Court is directed to accept no further submissions under this docket number, except for papers directed to the United States Court of Appeals for the Second Circuit. As the motion makes no substantial showing of a denial of a constitutional right, a certificate of appealability will not issue. Any appeal from this order would not be taken in good faith. (original document filed in 07cv7141 as doc. #3) (Signed by Judge Kimba M. Wood on 9/25/07)(kco) (Entered: 09/26/2007)
09/26/2007	172	NOTICE OF APPEAL by Nelson Aybar from Order. Copies sent to attorney(s) of record: A.U.S.A. (tp) (Entered: 02/14/2008)
09/26/2007		Appeal Remark as to Nelson Aybar re: <u>172</u> Notice of Appeal. \$455.00 APPEAL FEE DUE. IFP REVOKED 9/25/07. COA DENIED 9/25/07. (tp) (Entered: 02/14/2008)
02/14/2008		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to Nelson Aybar to US Court of Appeals re: <u>172</u> Notice of Appeal - Final Judgment. (tp) (Entered: 02/14/2008)

2255, APPEAL, CLOSED

U.S. District Court
United States District Court for the Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:07-cv-07141-KMW
Internal Use Only

Aybar v. USA
Assigned to: Judge Kimba M. Wood
Related Case: 1:92-cr-00718-TPG-3
Cause: 28:2255 Motion to Vacate / Correct Illegal Sentence

Date Filed: 08/10/2007
Date Terminated: 08/10/2007
Jury Demand: None
Nature of Suit: 510 Prisoner: Vacate Sentence
Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
08/10/2007	1	MOTION to Vacate, Set Aside or Correct Sentence (28 U.S.C. 2255). NO FURTHER ENTRIES. PLEASE SEE CRIMINAL CASE: 92cr0718 TPG.Document filed by Nelson Aybar.(jeh) (Entered: 08/21/2007)
08/10/2007		Magistrate Judge Douglas F. Eaton is so designated. (jeh) (Entered: 08/21/2007)
08/10/2007	2	TRANSFER ORDER (U.S.C.A.)....transfers this matter to the U.S.C.A. for the Second Circuit.... Sent original file along with certified copy of docket entries and transfer order. Mailed via Inter-Office Mail on 08/10/2007. (Signed by Judge Kimba M. Wood on 08/10/2007) (jeh) (Entered: 08/21/2007)
09/25/2007	3	ORDER: the motion for reconsideration is denied. The Clerk of the Court is directed to accept no further submissions under this docket number, except for papers directed to the United States Court of Appeals for the Second Circuit. As the motion makes no substantial showing of a denial of a constitutional right, a certificate of appealability will not issue. Any appeal from this order would not be taken in good faith. (Signed by Judge Kimba M. Wood on 9/25/07) (kco) (Entered: 09/26/2007)
09/26/2007		NOTICE OF APPEAL from 3 Order. Document filed by Nelson Aybar. Copies sent to attorney(s) of record: A.U.S.A. ORIGINAL DOCUMENT ENTERED IN CRIMINAL CASE #92cr0718-3, DOC. #172. (tp) (Entered: 02/14/2008)
09/26/2007		Appeal Remark as to Notice of Appeal filed by Nelson Aybar. \$455.00 APPEAL FEE DUE. IFP REVOKED 9/25/07. COA DENIED 9/25/07. (tp) (Entered: 02/14/2008)
02/14/2008		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: Notice of Appeal. (tp) (Entered: 02/14/2008)
02/14/2008		Transmission of Notice of Appeal to the District Judge re: Notice of Appeal. (tp) (Entered: 02/14/2008)